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14 UNITED STATES BANKRUPTCY COURT  
15 EASTERN DISTRICT OF WASHINGTON

16 In re

17 EASTERDAY RANCHES, INC., *et al.*

18 Debtors.<sup>1</sup>

Chapter 11

Lead Case No. 21-00141-WLH11  
Jointly Administered

19 EASTERDAY RANCHES, INC. and  
20 EASTERDAY FARMS, Plaintiffs,

21 vs.

22 ESTATE OF GALE A. EASTERDAY  
23 (DECEASED), KAREN L. EASTERDAY,  
24 CODY A. EASTERDAY, AND DEBBY  
EASTERDAY, Defendants.

Adv. Proc. No. 22-\_\_\_\_\_

**COMPLAINT FOR INJUNCTIVE  
RELIEF**

25  
26 <sup>1</sup> The Debtors along with their case numbers are as follows: Easterday Ranches, Inc.,  
27 (21-00141) and Easterday Farms, a Washington general partnership (21-00176).

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1                   Easterday Ranches, Inc. (“Ranches”) and Easterday Farms (“Farms”) are the  
2 debtors and debtors in possession and plaintiffs in the above-captioned adversary  
3 proceeding (the “Debtors” or “Plaintiffs”). The Debtors, by this Complaint, seek (i) a  
4 declaration that actions taken by the general partners of Farms and shareholders of  
5 Ranches, Cody Easterday, Debby Easterday and Karen Easterday (in her individual  
6 capacity and as the representative of her recently deceased husband, Gale Easterday)  
7 (collectively, the “Partners” or “Defendants”) to remove the individual members of the  
8 Board of Directors for each of the Debtors (collectively, the “Independent Directors” or  
9 “Current Boards”) was a clear abuse in violation of the automatic stay of section 362 of  
10 the Bankruptcy Code and so void ab initio, and (ii) an injunction from any further  
11 attempts by the Partners to remove the Independent Directors or otherwise modify the  
12 governing documents of the Debtors.<sup>2</sup> The declaratory and injunctive relief requested  
13 by this Complaint is necessitated because, on March 12, 2022, the Defendants executed  
14 (i) a unanimous written consent of the shareholders of Ranches purporting to remove  
15 the Current Board and (ii) an amendment to the Easterday Farms partnership agreement  
16 purporting to replace the Current Board with a manager (together, the “Disputed  
17 Corporate Actions”). These Disputed Corporate Actions come after a month-long series  
18 of settlement discussions and on the eve of a hearing on approval of a disclosure  
19 statement and motions to approve settlements with third parties that the Defendants do  
20 not believe are in *their* best interests. At the center of the dispute are the Defendants’  
21 continuing assertions that there is a conflict of interest between the Farms’ estate and  
22 Ranches’ estate because the Defendants believe that Farms’ creditors can be paid in full  
23 with a return to equity (*i.e.*, the Defendants) and the duties of Ranches are somehow in  
24 direct conflict with those objectives. These are the same arguments made by the  
25 Defendants in their *Motion to Disqualify Pachulski Stang Ziehl & Jones LLP and Bush*

26                   <sup>2</sup> The Independent Directors are Mr. R. Todd Neilson, Mr. Craig Barbarosh, and Mr.  
27 Thomas Saunders, V.

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1 *Kornfeld LLP as Counsel for Debtors* [Adv. Pro. No. 21-80050 (WLH) (the “Allocation  
2 Adversary,” Adv. Dkt. No. 28] (the “Disqualification Motion”), which was rejected by  
3 the court on December 21, 2021. *See* Adv. Pro. Docket No. 39. However, rather than  
4 seek appropriate relief from the automatic stay or otherwise renew their Disqualification  
5 Motion, the Defendants have taken the extraordinary step of willfully violating the  
6 automatic stay by taking the Disputed Corporate Actions, which are void *ab initio* under  
7 *In re In re Schwartz*, 954 F.2d 569 (9th Cir. 1992).

8 Pursuant to this Complaint, the Debtors request that the court enter the  
9 declaratory and injunctive relief to stop the Defendants’ gamesmanship against the  
10 Independent Directors.

11 In addition, a majority of the stakeholders in these chapter 11 cases agree that a  
12 consensual amended chapter 11 plan is near. Replacing the Independent Directors at  
13 this juncture is not simply a ploy for additional leverage, but is a clear abuse of the  
14 process by Defendants that seriously jeopardizes the plan process and, similar to the  
15 Nortel case, risks squandering the tremendous result of the sale process on years of  
16 litigation and tens of millions of dollars in legal fees.

17 Conspicuously absent from any of the pleadings filed by the Partners regarding  
18 the alleged conflict of interest, including, most recently, in *Karen L. Easterday’s Status*  
19 *Conference Report and Notice of Amendment to the Farms Partnership Agreement*  
20 [Docket No. 1472], is any mention of the responsibility of the Partners for these  
21 bankruptcy cases in the first instance. As this court is aware, these chapter 11 cases are  
22 the result of a fraud in excess of \$200 million dollars concocted by Cody Easterday  
23 while the co-Defendants – partners and/or board members of the Debtors throughout  
24 the fraud – did nothing to stop it.

25 Prior to the commencement of these chapter 11 case, Tyson Fresh Meats, Inc.  
26 (“Tyson”) and Washington Trust Bank (“WTB”) each sought the appointment of a

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1 receiver over the Debtors. In an effort to placate Tyson and WTB, the Independent  
2 Directors were appointed to commence and manage these chapter 11 cases in the best  
3 interests of **all** stakeholders.

4 Since their appointment, the Independent Directors have worked tirelessly to  
5 maximize value of the Debtors' estates and propose a chapter 11 plan that provides  
6 substantial recoveries to the general unsecured creditors of Farms and meaningful  
7 recoveries to the general unsecured creditors of Ranches, including the direct victims  
8 of "Cattlegate." For example, the Independent Directors have overseen the sale of  
9 substantially all of the Debtors' assets, the resolution of myriad disputes with creditors,  
10 including each of the Debtors' material secured lenders, and are now on the verge of  
11 reaching a consensual chapter 11 plan with the Debtors' key creditor constituents,  
12 including Tyson, Segale Properties LLC, the Official Committee of Unsecured  
13 Creditors of Farms, and the Official Committee of Unsecured Creditors of Ranches.  
14 Notably, a consensual chapter 11 plan will resolve complex issues concerning  
15 substantive consolidation and avoid protracted and expensive litigation related thereto.

16 The Independent Directors have attempted to engage the Defendants throughout  
17 these chapter 11 cases. Unfortunately, because of the Defendants' inherent conflict of  
18 wanting a maximum recovery at Farms to provide them with equity value, rather than  
19 achieving an equitable resolution, the Defendants have been unyielding and have fought  
20 tooth and nail against the Ranches estate, doubling down on the harm to the Ranches  
21 estate and the direct victims of the fraud. Ironically, it is the fact that the Independent  
22 Directors are operating independently and in the best interests of **both** estates that  
23 troubles the Defendants.

24 The Defendants' latest attempt to replace the Independent Directors puts the  
25 anticipated consensual chapter 11 plan at risk and may lead to the appointment of  
26 independent chapter 11 trustees or the conversion of these cases to chapter 7.

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1 In support of this Complaint, the Debtors allege as follows:

2 **JURISDICTION, VENUE AND PARTIES**

3 1. The court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157  
4 and 1334(b). This action is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A)  
5 and (O).

6 2. Venue is proper in this District under 28 U.S.C. § 1409.

7 3. The proceeding has been brought in accordance with 11 U.S.C. §§ 105(a)  
8 and 362 and Rules 7001(7) and 7065 of the Federal Rules of Bankruptcy Procedure.

9 4. Debtor Easterday Ranches, Inc. is a Washington State corporation.

10 5. Debtor Easterday Farms is a Washington State general partnership.

11 **THE DEFENDANTS**

12 6. Defendant Cody Easterday is an individual residing in Franklin County,  
13 Washington, and he is a general partner of Farms and shareholder of Ranches.

14 7. Defendant Debby Easterday is an individual residing in Franklin County,  
15 Washington, and she is a general partner of Farms and a shareholder of Ranches.

16 8. Defendant Karen Easterday is an individual residing in Franklin County,  
17 Washington, and she is a general partner of Farms and a shareholder of Ranches. Karen  
18 Easterday is also the personal representative of the estate of Gale Easterday. Gale  
19 Easterday was a general partner of Farms and a shareholder of Ranches.

20 **BACKGROUND FACTS**

21 9. Plaintiffs incorporate herein and re-allege the allegations above.

22 **A. General Case Background**

23 10. On January 24, 2021, Tyson filed a lawsuit against Ranches (the “Tyson  
24 Lawsuit”) in the Superior Court of the State of Washington for Franklin County (the  
25 “Washington State Court”) and concurrently filed a Motion for the Appointment of  
26 Receiver (the “Tyson Receiver Motion”). The Tyson Lawsuit alleged, *inter alia*, that

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1 Ranches' former president, Cody Easterday, purportedly engaged in fraudulent  
2 "forward billing" practices, resulting in Tyson's overpayment of over \$200 million for  
3 the purchase and feeding of "non-existent" or "missing" cattle due to the submission of  
4 fraudulent invoices and records pursuant to the Cattle Feeding Agreement. The Tyson  
5 Receiver Motion was set for hearing during the afternoon of February 1, 2021.

6 11. On January 29, 2021, the Ranches' shareholders, who also comprised the  
7 then-constituted Board of Directors of Ranches - Cody Easterday, Debby Easterday,  
8 and Karen L. Easterday (collectively, the "Former Board") - executed that certain  
9 Action by Written Consent to elect the Independent Directors as Ranches' directors.  
10 Thereafter and on that same date, each member of the Former Board resigned their  
11 positions as directors and officers of Ranches.

12 12. On January 31, 2021, the Partners executed that certain Amendment No. 1  
13 to Easterday Farms Partnership Agreement, thereby transferring control of Farms to the  
14 Independent Directors. The Independent Directors were selected for their experience  
15 and expertise in the cattle and/or restructuring industry.

16 13. On February 1, 2021, WTB filed a lawsuit against each of the Debtors as  
17 well as the Debtors' principals in Washington State Court (the "WTB Lawsuit") and  
18 concurrently filed a Motion to Appoint Receiver (the "WTB Receiver Motion," and  
19 collectively with the Tyson Receiver Motion, the "Receiver Motions"). The WTB  
20 Lawsuit alleged, *inter alia*, certain defaults arising under the Debtors' loan with WTB  
21 principally relating to the filing of the Tyson Lawsuit and the Tyson Receiver Motion  
22 as well as the death of Gale Easterday. The WTB Receiver Motion was set for hearing  
23 concurrently with the Tyson Receiver Motion.

24 14. On the morning of February 1, 2021 (the "Ranches Petition Date"),  
25 Ranches filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code,  
26 staying the Tyson Lawsuit and Tyson Receiver Motion. The WTB Lawsuit and the

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1 WTB Receiver Motion were also stayed, solely as to Ranches. At the hearing on the  
2 Receiver Motions, the Debtors disclosed Ranches' chapter 11 filing and Farms'  
3 imminent chapter 11 filing. As a result, the Washington State Court stayed the  
4 proceedings with respect to Ranches and issued a Temporary Restraining Order against  
5 Farms, which generally prohibited it from transferring property outside the ordinary  
6 course of business.

7 15. On February 8, 2021, Tyson filed its *Motion for Appointment of Chapter*  
8 *11 Trustee* in the Ranches case [Docket No. 79] (the "Trustee Motion"). On February  
9 19, 2021, WTB filed *Washington Trust Bank's Motion to Appoint Ch. 11 Trustee and*  
10 *Joinder in Tyson Fresh Meat, Inc. Motion for Appointment of Chapter 11 Trustee*  
11 [Docket No. 177] (the "WTB Trustee Motion," and together with the Tyson Trustee  
12 Motion, the "Trustee Motions"), seeking to appoint a chapter 11 trustee over Farms'  
13 chapter 11 estate and joining the Tyson Trustee Motion. The Debtors reached  
14 settlements of the Trustee Motions that provided for the withdrawal of each of the  
15 Trustee Motions conditioned upon the Debtors achieving certain case milestones.<sup>3</sup> The  
16 Trustee Motions were each withdrawn without prejudice should the Debtors fail to  
17 achieve the milestones, or, in the case of the stipulation with Tyson, based upon acts or  
18 omissions of the Debtors found by the Bankruptcy Court to constitute gross negligence  
19 or willful misconduct occurring on a postpetition basis.

20 16. On February 8, 2021 (the "Farms Petition Date," and together with the  
21 Ranches Petition Date, the "Petition Dates"), Farms filed a voluntary petition for relief  
22  
23

24 <sup>3</sup> See *Order Authorizing Debtor Easterday Ranches, Inc. to Enter into Settlement*  
25 *Term Sheet with Tyson Fresh Meats, Inc.* [Docket No. 265]; *Stipulation by and*  
26 *between Debtor Easterday Farms and Washington Trust Bank (I) Resolving Motion*  
27 *to Appoint Trustee filed by Washington Trust Bank and (II) Imposing Certain Case*  
*Milestones* [Docket No. 266].

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1 under chapter 11 of the Bankruptcy Code, staying the WTB Lawsuit and the WTB  
2 Receiver Motion against it.

3 17. On February 8, 2021 (the “Farms Petition Date,” and together with the  
4 Ranches Petition Date, the “Petition Dates”), Farms filed a voluntary petition for relief  
5 under chapter 11 of the Bankruptcy Code, staying the WTB Lawsuit and the WTB  
6 Receiver Motion against it.

7 18. On February 16, 2021, the Office of the United States Trustee (the “U.S.  
8 Trustee”) appointed the following creditors to the Ranches Official Committee of  
9 Unsecured Creditors, as amended [Docket Nos. 152, 154, and 155] (the “Ranches  
10 Committee”): (i) J.R. Simplot; (ii) Alto Nutrients; and (iii) Animal Health International.

11 19. On February 22, 2021, the U.S. Trustee appointed the following creditors  
12 to the Farms Official Committee of Unsecured Creditors, as amended [Docket Nos. 187  
13 and 193] (the “Farms Committee” and together with the Ranches Committee, the  
14 “Committees”): (i) Labor Plus Solutions, Inc.; (ii) The McGregor Company; (iii) John  
15 Deer Financial; (iv) Dykman Electrical Inc.; (v) Two Rivers Terminal; and (vi) Frank  
16 Bushman.

17 20. Additional information about the Debtors’ historical business operations,  
18 capital structure, and the events leading up to the commencement of these chapter 11  
19 cases, is set forth in the *Declaration of T. Scott Avila in Support of First Day Motions*  
20 [Docket No. 93], which is incorporated herein by reference.

21 **B. The Debtors’ Business Operations and the Properties**

22 21. Until recently, the Debtors operated commercial farming and ranching  
23 operations which required significant acreage to accommodate the Debtors’ expansive  
24 operations. In this regard, the Debtors’ operations spanned approximately 22,500 acres  
25 over multiple farms, lots/ranches, and other complexes and facilities, which were  
26 generally referred to by their common names: (i) Goose Gap Farm, (ii) River Farm, (iii)

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1 Nine Canyon Farm, (iv) Cox Farm, and (v) a storage complex and farmhouse on River  
2 Farm (the “Storage Complex,” and, collectively, the “Sale Properties”).

3 **C. The Sale of the Properties**

4 22. On March 26, 2021, the Debtors filed the *Notice and Motion for (I) an Order (A) Approving Bid Procedures for the Sale of Assets; (B) Approving Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases; (C) Scheduling the Auction and Sale Hearing; and (D) Granting Related Relief; and (II) an Order (A) Approving the Sale Free and Clear of All Claims, Liens, and Encumbrances; and (B) Approving the Assumption and Assignment or Rejection of Executory Contracts and Unexpired Leases* (the “Bid Procedures Motion”). [Docket No. 486].

5 23. On May 19, 2021, the Debtors filed the *Supplemental Motion for Approval of (A) Designation of Stalking Horse Bidder and Related Bid Protections in Connection with Auction for Sale of Assets; and (B) Granting Related Relief* [Docket No. 724] (the “Stalking Horse Motion”) seeking, among other things, approval of a Stalking Horse Bidder (as defined in the Stalking Horse Motion) and approval of certain bid protections for the Stalking Horse Bidder. On May 27, 2021, the court entered an order approving the Stalking Horse Motion [Docket No. 744]. The auction regarding the sale of the Sale Properties was held on June 16, 2021 and resulted in a winning bid of \$209 million. On June 21, 2021, the Debtors filed the *Notice of Auction Results* [Docket No. 830].

6 24. Shortly before the sale closed, the Debtors determined that in fact, the Sale Properties, including all individual parcels, were owned by the Debtors and not the individual partners. Following the closing of the sale, the Debtors engaged with all stakeholders, including the Defendants, in an effort to resolve disputes concerning the ownership of the Sale Properties and the allocation of the sale proceeds and other assets in connection with the formulation of a confirmable plan with the consent of the stakeholders. While substantial progress was made amongst all of the key stakeholders,

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1 the Debtors were unable to reach agreement with the Defendants. In order to progress  
2 the plan process, the Debtors determined that there needed to be resolution of the  
3 ownership issues.

4 25. Thus, on November 16, 2021, the Debtors filed a complaint seeking a  
5 declaratory judgment that the Debtors owned all of the Sale Properties (the “Allocation  
6 Complaint”) [Adv. Pro. No. 21-80050, Adv. Dkt. No. 1].

7 26. Although the Debtors are confident that either Farms or Ranches own all  
8 of the Sale Properties, including all individual parcels that make up the Sale Properties,  
9 the Debtors believe they can confirm a chapter 11 plan regardless of the outcome of the  
10 Allocation Complaint.

11 **D. The Plan Process**

12 27. On December 1, 2021, the Debtors filed their *Second Amended Joint*  
13 *Chapter 11 Plan of Liquidation of Easterday Ranches, Inc. and Easterday Farms*  
14 [Docket No. 1383] (the “Plan”) and *Disclosure Statement for the Second Amended Joint*  
15 *Chapter 11 Plan of Liquidation of Easterday Ranches, Inc. and Easterday Farms*  
16 [Docket No. 1382] (the “Disclosure Statement”).

17 28. On March 11, 2022, the Easterdays each filed objections to the Disclosure  
18 Statement [Docket Nos. 1467 and 1470] alleging that (i) the Disclosure Statement and  
19 Plan create irresolvable conflicts that require the resignation of the Debtors’ Counsel,  
20 the Board of Directors, and Management of Easterday Farms and Easterday Ranches;  
21 (ii) the Disclosure Statement and Plan improperly attempt to substantively consolidate  
22 the Ranches and Farms Estates; (iii) the Plan is not confirmable; (iv) the Disclosure  
23 Statement fails to provide adequate information to Creditors; (v) the Debtors have  
24 exceeded the scope of their authority to act joint of behalf of the estates; and (vi) the  
25 case is not moving toward a fair and equitable resolution.

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1       **E. Washington Trust Bank Settlement**

2       29. On February 17, 2022, the Debtors filed a motion [Docket No. 1431] (the  
3       “WTB Settlement Motion”) to approve that certain Settlement Agreement and Release  
4       (the “WTB Settlement Agreement”) between the Debtors and Washington Trust Bank  
5       (“WTB”) to fully and finally resolve the disputes that currently exist between them  
6       pursuant to the terms of the WTB Settlement Agreement. Specifically, the WTB  
7       Settlement Agreement reduces WTB’s allowed secured claim by 10% and, upon  
8       payment, assigns to the Debtors’ estates or any successor thereto all of WTB’s rights  
9       under the applicable loan documents, including any right to pursue deficiency claims  
10      against non-Debtors (*i.e.*, the Defendants).

11      30. On March 11, 2022, the Defendants filed objections to the WTB  
12     Settlement Motion, asserting, among other things, that the terms of the settlement (i)  
13     are not reasonable, appropriate, fair or equitable, (ii) are designed to exert maximum  
14     pressure on the Defendants, and (iii) are the product of conflicts of interest and a breach  
15     of various fiduciary duties. In other words, because the Defendants are not receiving a  
16     release (under a settlement for which they are not providing any consideration), the  
17     Defendants oppose the settlement – regardless of the tremendous benefit to the estates  
18     (*i.e.*, the nearly \$5 million reduction of a secured claim).

19       **F. CHS Settlement**

20      31. On February 18, 2022, the Debtors filed a motion [Docket No. 1433] (the  
21     “CHS Settlement Motion” and together with the WTB Settlement Motion, the  
22     “Settlement Motions”) to approve that certain Settlement Agreement between the  
23     Debtors and CHS (the “CHS Settlement Agreement”) in full resolution of the claims  
24     asserted by the CHS Parties against the Debtors. The CHS Settlement Agreement is a  
25     global settlement among the Debtors and the CHS Parties that resolves numerous  
26     inbound and outbound claims, such as (i) claims asserted by the CHS Parties against

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1 the Debtors on account of feed and fuel supplies and (ii) claims asserted by the Debtors  
2 against the CHS Parties relating to their role in the hedging activities. Under the terms  
3 of the CHS Settlement Agreement, the Debtors will receive \$7.4 million and a release  
4 of any claims by the CHS Parties – avoiding years of protracted and expensive litigation.  
5 Moreover, both the Farms Committee and the Ranches Committee support the  
6 settlement given their lack of objection.

7 32. However, the Defendants oppose the CHS Settlement Agreement and  
8 claim they have an ownership interest in the accrued patronage (one element of the  
9 settlement).

10 33. A hearing on the Settlement Motions is scheduled for March 16, 2022 at  
11 11:00 a.m. Accordingly, as a result of the Disputed Corporate Actions, the Defendants  
12 are intending to undo previously approved, and widely supported settlement agreements  
13 that do not directly enrich the Defendants.

14 **G. The Initial Letter**

15 34. On December 29, 2021, approximately one week after the court rejected  
16 the Disqualification Motion, the Defendants sent a letter by email to the Independent  
17 Directors (the “Letter”) stating that it was “clear” that there is an “irresolvable conflict”  
18 in serving on the Boards of Directors for both Farms and Ranches. Among other  
19 baseless allegations, the Defendants stated that they have “become increasingly  
20 concerned” that the Independent Directors “cannot carry out” their responsibilities to  
21 Farms while also performing their duties for Ranches, and the Defendants believe they  
22 are no longer able to do so. The Defendants also state that:

23 We do not see any alternative other than your resignations from the  
24 Board of Directors for each Debtor so that each Board can be replaced  
25 with new independent directors and negotiations can resume between  
26 both Estates towards a mutually beneficial settlement untainted by  
conflicts of interest.

27  
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1           35. Through the Letter, the Defendants demanded the Independent Directors  
2 resign for an unsubstantiated conflict of interest.

3           **H. Global Settlement Negotiations**

4           36. Following the Letter, beginning on February 11, 2022, the Debtors and the  
5 Defendants entered into a series of stipulated standstill agreements, requiring the parties  
6 to standstill on all adversarial actions through and including March 10, 2022. During  
7 this standstill period, the Debtors and Defendants engaged in extensive settlement  
8 negotiations, resulting in the exchange of approximately six (6) settlement term sheets  
9 – the last several of which incorporated terms that were acceptable to Tyson Fresh  
10 Meats, Inc., Segale Properties LLC, and the Ranches Committee. In other words, from  
11 the Debtors' perspective, the parties were extremely close to reaching a consensual  
12 global settlement. In fact, the Debtors felt that the parties were so close that a mediation  
13 on the last remaining points was unnecessary and could be consensually resolved with  
14 another exchange of term sheets. To the Debtors' disappointment, the Defendants  
15 rejected the Debtors' last settlement offer on March 10, 2022, and re-asserted their  
16 March 3, 2022 offer. The standstill period expired on March 11, 2022, and the  
17 Defendants took the Disputed Corporate Actions in violation of the automatic stay.

18           **I. There Is No Conflict**

19           37. The Defendants have not offered any evidence to show or prove an actual  
20 conflict. Rather, what has become clear to the Defendants is that the Farms Committee,  
21 Ranches Committee, Tyson, and Segale are near a global settlement – with or without  
22 the Defendants. The Disputed Corporate Actions represent a last ditch effort by the  
23 Defendants to obtain a better result for themselves, at the expense of the rest of estates'  
24 constituents.

25           38. Indeed, the Disputed Corporate Actions are just another attempt by the  
26 Defendants to litigate a new front in their objections to the relief sought in the Allocation  
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28           **COMPLAINT FOR INJUNCTIVE  
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1 Complaint, their objections to the currently proposed plan, and their objections to the  
2 Settlement Motions. The court should not permit equity to oust independent  
3 management simply because equity hopes for a better deal for their own pockets. As  
4 discussed above, the Debtors are on the verge of presenting a consensual chapter 11  
5 plan which enjoys the approval of almost all of the Debtors' stakeholders – all but the  
6 Defendants. It would be absurd – and catastrophic to the efforts of the Independent  
7 Directors and the Debtors' professionals to maximize value for all stakeholders – to  
8 permit the Defendants to remove the Independent Directors at this moment in time.

9 39. To be sure, in an effort to get to a deal that satisfies them, the Defendants  
10 are comfortable leading the estates to the edge of the proverbial cliff, letting them fall-  
11 off and destroying the recoveries of stakeholders because they are not getting as much  
12 as they want.

13 40. Such reckless behavior is striking given all of the protections afforded to  
14 the Defendants under the Bankruptcy Code to protect their legitimate interests to the  
15 extent they are not addressed in a plan. To the extent the Defendants intend to dispute  
16 any settlement that may occur as a result of plan negotiations, their rights are fully  
17 protected and they may do so at the appropriate time, *i.e.*, when a settlement is presented  
18 to the court for approval.

19 41. In light of the critical juncture of these chapter 11 cases, the court must  
20 intervene to prevent the Defendants from taking any further actions that may harm the  
21 estates and jeopardize the Debtor' ability to maximize the value of their estates and  
22 confirm a widely consensual chapter 11 plan. The Defendants' recent efforts to remove  
23 the Independent Directors is a clear abuse that, if unchecked, could severely jeopardize  
24 the ability to accomplish these goals.

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28 COMPLAINT FOR INJUNCTIVE  
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## **FIRST CLAIM FOR RELIEF**

**(For Injunctive Relief under 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 7065)**

42. Plaintiffs incorporate herein and re-allege the allegations above.

43. Plaintiffs seek a preliminary injunction, under 11 U.S.C. § 105(a) and Federal Rule of Bankruptcy Procedure 7065, (i) enjoining any actions by the Defendants to amend, alter, or otherwise affect the corporate governance of the Debtors, including, but not limited to, the appointment or removal of any directors or officers of the Debtors, (ii) enjoining any actions by the Defendants to alter, amend, or otherwise modify the governing documents of the Debtors, including the partnership agreement of Farms, and (iii) enjoining, to the extent necessary, the effectiveness of any prior actions of the Defendants to remove the Independent Directors for each of the Debtors through and including the earlier of the effective date of a plan of liquidation or conversion of these cases to chapter 7.

44. Section 105(a) of the Bankruptcy Code authorizes the court to issue “any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Relief under section 105(a) is particularly appropriate in chapter 11 cases, such as the above-captioned cases, in which the debtors’ estates are impaired by the efforts from equity holders to remove independent directors acting as fiduciaries under the court’s watch to maximize the value of estates and propose a plan that provides for the payment of creditors’ claims.

45. Under section 105(a) of the Bankruptcy Code, this court has the power to enjoin the Defendants from any actions by the Defendants to amend, alter, or otherwise affect the corporate governance of the Debtors that would severely threaten the progress of these chapter 11 cases and the chance of a consensual chapter 11 plan.

46. Unless enjoined, the Defendants' conduct, including the Disputed Corporate Actions, will irreparably harm the Debtors – and their creditors – by

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1 distracting the Independent Directors and Current Board at a critical point in the  
2 Debtors' cases during which the full attention of the Independent Directors is key to  
3 negotiating, formulating, and seeking approval of a chapter 11 plan.

4 47. The Defendants' course of conduct is clear abuse because replacing the  
5 Independent Directors will not only significantly delay the chapter 11 cases but will  
6 seriously jeopardize the delicate and substantial on-going negotiations in formulating a  
7 plan construct. If the Disputed Corporate Actions are permitted, such actions will have  
8 unnecessarily put the Debtors' resolution of these cases and distributions to  
9 stakeholders in jeopardy.

10 48. The potential harm to the Debtors and other creditors from not enjoining  
11 the Defendants from any attempts to remove the Independent Directors far outweighs  
12 the potential harm to the Defendants.

13 49. Issuance of injunctive relief will serve the public interest in that it will  
14 protect the integrity of the Debtors' plan efforts, and preserves integrity of board  
15 fiduciaries acting on behalf of debtors in chapter 11 that need independence, rather than  
16 being subject to the whims of closely-held equity family members. This is in the best  
17 interests of all creditors.

18 50. The Debtors lack an adequate remedy at law. Without the court's  
19 intervention and injunctive relief, the Defendants may continue to unnecessarily disrupt  
20 these chapter 11 cases, put the anticipated consensual chapter 11 plan at risk, and may  
21 also lead to the appointment of independent chapter 11 trustees or the conversion of  
22 these cases to chapter 7.

23 51. Thus, injunctive relief (i) enjoining any actions by the Defendants to  
24 amend, alter, or otherwise affect the corporate governance of the Debtors, including,  
25 but not limited to, the appointment or removal of any directors or officers of the Debtors,  
26 (ii) enjoining any actions by the Defendants to alter, amend, or otherwise modify the

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1 governing documents of the Debtors, including the partnership agreement of Farms, and  
2 (iii) enjoining, to the extent necessary, the effectiveness of any prior actions of the  
3 Defendants to remove the Independent Directors for each of the Debtors is both  
4 necessary and appropriate under 11 U.S.C. § 105(a).

5 **SECOND CLAIM FOR RELIEF**

6 **(For Violation of Automatic Stay Relief under 11 U.S.C. § 362(a) and**  
7 **28 U.S.C. §§ 2201 and 2202)**

8 52. Plaintiffs incorporate herein and re-allege the allegations above.

9 53. Pursuant to 11 U.S.C. § 362(a)(3), each Debtors' bankruptcy petition  
10 operates as a stay of "any act to obtain possession of property of the estate or of property  
11 from the estate or to exercise control over property of the estate."

12 54. The Defendants' efforts in taking the Disputed Corporate Actions is an act  
13 to exercise control over property of the estate of each Debtor. The Defendants' actions  
14 in replacing the Current Boards are an attempt to assert control over the estates' assets.

15 55. Defendants' willfully violated the automatic stay under 11 U.S.C. §  
16 362(a)(3) by taking the Disputed Corporate Actions to replace the Current Boards in  
17 their attempt to exercise control over the Debtors' assets. The Defendants actions will  
18 result in harm to the Debtors' not only because of the unnecessary ligation costs they  
19 will generate, but also the Defendants' actions will jeopardize the Independent  
20 Directors' and other key constituencies' efforts in these Chapter 11 Cases as the Debtors  
21 work to negotiate, formulate, and seek approval of a chapter 11 plan.

22 56. Violations of the automatic stay are void and have no effect. *See, e.g., In*  
23 *re In re Schwartz*, 954 F.2d 569 (9th Cir. 1992).

24 57. Plaintiffs dispute any of the Defendants' assertions that their efforts in  
25 taking the Disputed Corporate Actions (i) did not violate the automatic stay or (ii) have  
26 any legal effect.

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58. Accordingly, an actual, substantial, and justiciable controversy exists between Plaintiff and Defendant concerning whether Defendants' actions (i) violated the automatic stay and (ii) have any legal effect.

59. Accordingly, the Plaintiffs seek a determination and judgment under 28 U.S.C. §§ 2201 and 2202 that the Disputed Corporate Actions (i) violated the automatic stay under 11 U.S.C. § 362(a)(3), (ii) are void *ab initio*, and (iii) and are of no legal effect.

**WHEREFORE**, the Debtors respectfully pray for judgment as follows:

A. For a determination and judgment on the First Claim for Relief that the Debtors are entitled, under 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 7065, to injunctive relief to prevent the Defendants from taking any and all attempts to remove the Independent Directors from the Current Boards; and

B. For a determination and judgment under 28 U.S.C. §§ 2201 and 2202 on the Second Claim for Relief that the Defendants have willfully violated the automatic stay under 11 U.S.C. § 362(a) by taking the Disputed Corporate Actions and such actions are void *ab initio* and have no effect; and

C. For costs of suit incurred herein; and

D. Such other and further relief as the court deems just and proper.

DATED: March 14, 2022 BUSH KORNFELD LLP

/s/ *Thomas A. Buford*

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